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Attorneys for the United States

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

SHERRY GEHRUNG,

Defendant.

No. CR 08-00114 JW

**STIPULATION AND [PROPOSED]  
ORDER AUTHORIZING DEFENDANT  
TO RECEIVE ADDITIONAL CREDIT  
ON HER RESTITUTION OBLIGATION  
AND DISMISSING DEFENDANT'S 18  
U.S.C. § 2255 MOTION REGARDING  
RESTITUTION**

The United States of America and defendant Sherry Gehrung respectfully submit this stipulation and proposed order to: (1) permit defendant to receive credit against her restitution for \$45,513.17 she previously repaid the victim-company Alza (her former employer) from whom she had embezzled \$328,269.59; as well as (2) receive credit against her restitution for \$1,840 worth of cash and various gift cards defendant is prepared to surrender any interest in and have the proceeds applied to restitution; and (3) dismiss with prejudice defendant's previously-filed 18 U.S.C. § 2255 motion claiming that she received ineffective assistance of counsel because her attorney, John Halley, did not insure at sentencing that defendant receive a credit against her restitution for the aforementioned \$45,513.37 she previously repaid Alza.

STIPULATION AND [PROPOSED] ORDER AUTHORIZING DEFENDANT TO RECEIVE ADDITIONAL CREDIT ON HER RESTITUTION OBLIGATION AND DISMISSING DEFENDANT'S 18 U.S.C. § 2255 MOTION RE RESTITUTION

**BACKGROUND**

1  
2 A. On October 24, 2008, the Court entered a Judgment in a Criminal Case (the  
3 "J&C"), by which defendant was convicted of Wire Fraud, was sentenced to 15 months of  
4 imprisonment, and ordered to pay (1) a special assessment of \$100, and (2) restitution of  
5 \$328,296.59 to payee Alza Corporation.

6 B. As put forward in the plea agreement in this matter, defendant's conviction arose  
7 from her criminal conduct while employed as an Administrative Assistant at the Alza  
8 Corporation when she used an Alza American Express credit card to pay for personal expenses  
9 that were not related to Alza's business.

10 C. Defendant has served her custodial sentence and has paid her special assessment.

11 D. Defendant believes she should be given credit against her restitution balance for  
12 \$45,513.37 she repaid Alza prior to her sentencing. The Presentence Report in this case  
13 indicated that defendant had "made a payment of \$45,513.17 toward the [Alza American  
14 Express] credit card from her personal Wells Fargo checking account" prior to her arrest. See  
15 Presentence Report at ¶12.

16 E. On November 3, 2009, defendant filed a 18 U.S.C. § 2255 motion claiming that  
17 she was denied the effective assistance of counsel because her counsel did not request that the  
18 amount of restitution be adjusted to reflect the \$45,513.17 pre-arrest payment defendant made to  
19 Alza.

20 F. The United States Attorney's Office subsequently contacted the United States  
21 Secret Service, which has confirmed that defendant did in fact make a payment of \$45,513.17  
22 from her personal account to pay off her Alza American Express credit card bill.

23 G. During the course of the prosecution of defendant's embezzlement, the United  
24 States Secret Service has taken into its possession a \$1,117 cash and a total of \$723 in various  
25 gift cards that had previously been in the defendant's possession.

26 H. The defendant agrees to relinquish any and all right, title and interest she may  
27 have in the \$1,840 total in cash and gift cards referenced above in paragraph (G) and also agrees  
28

that such right, title and interest can be applied toward the payment of restitution to Alza.

For good cause, the parties stipulate and agree as follows:

**STIPULATION**

1 The Clerk of the Court shall give defendant a credit of \$45,513.17 toward  
2 restitution for the \$45,513.17 she repaid Alza prior to her sentencing.

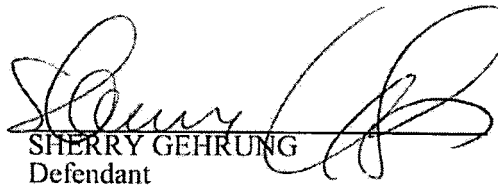
3 2. The cash and gift cards totaling \$1,840 related to this case currently in the  
4 possession of the United States Secret Service are ordered to be turned over to the Clerk of the  
5 Court to be provided as payment for restitution to victim Alza.

6 3. The Clerk of the Court shall give defendant an additional credit of \$1,840 toward  
7 restitution in connection with the cash and gift cards referenced above at paragraph (2).

8 4. The defendant's 18 U.S.C. § 2255 motion is ordered dismissed with prejudice.

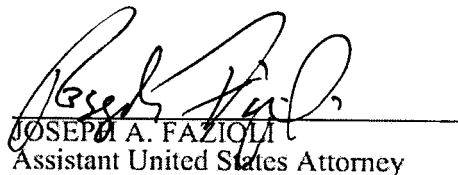
**SO STIPULATED:**

Dated: 11/2/10

  
SHERRY GEHRUNG  
Defendant

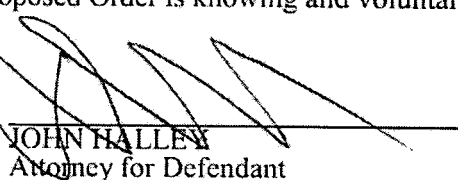
MELINDA L. HAAG  
United States Attorney

Dated: 11/3/10

  
JOSEPH A. FAZIOLI  
Assistant United States Attorney

I have fully explained to my client the rights that a criminal defendant has and all the  
terms of this Stipulation and Proposed Order. In my opinion, my client understands all the terms  
of this Stipulation and Proposed Order, and, based on the information now known to me, her  
decision to enter into this Stipulation and Proposed Order is knowing and voluntary.

Dated: 11/2/10

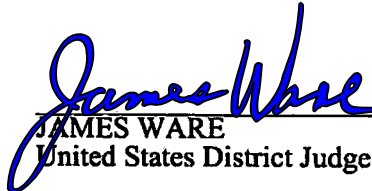
  
JOHN HALLEY  
Attorney for Defendant

**ORDER APPROVING STIPULATION**

The Court, having reviewed the stipulation set forth above, and good cause appearing, hereby approves it and orders: (1) (2) (3) and (4)

IT IS SO ORDERED.

Dated: November 5, 2010

  
JAMES WARE  
United States District Judge